NO. 81-6937

IN THE

UNITED STATES SUPREME COURT

OCTOBER TERM, 1982

ROBERT LEE WHITE,

Petitioner

V.

W. J. ESTELLE, JR., DIRECTOR,
TEXAS DEPARTMENT OF CORRECTIONS,

Respondent

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

I. IS JACKSON V. VIRGINIA, 443 U.S. 307, APPLICABLE TO FEDERAL HABEAS CORPUS REVIEW OF A JURY VERDICT OF COMPETENCY TO STAND TRIAL?

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RESPONDENT'S BRIEF IN OPPOSITION

TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

NOW COMES W. J. Estelle, Jr., Director, Texas Department of Corrections, Respondent herein, by and through his attorney, the Attorney General of Texas, and in response to Petitioner's writ of certiorari files this his Brief in Opposition:

OPINION BELOW

The United States Court of Appeals for the Fifth Circuit delivered its opinion affirming the denial of federal habeas corpus relief on March 8, 1982. White v. Estelle, 669 F.2d 973 (5th Cir. 1982).

JURISDICTION

Petitioner seeks to invoke the jurisdiction of this Court under the provisions of 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES

Petitioner bases his claims upon the Fifth and Fourteenth Amendments to the United States Constitution. Also involved is 28 U.S.C. §2254(d).

STATEMENT OF THE CASE

Respondent is in substantial agreement with Petitioner's statement of the case, except for a misstatement found on page 4 of Petitioner's brief. Petitioner alleges that the federal district court, relying on Jackson v. Virginia, 443 U.S. 307 (1979), held that "there was some evidence upon which a rational trier of fact could have found Petitioner competent. . ." (emphasis in original). A review of the district court's evaluation of this case clearly reveals that the decision of that court was predicated upon a review of "all the evidence." The district court then concluded that the evidence adduced was legally sufficient to enable a rational trier of facts to make the same findings which the jury made. White v. Estelle, 669 F.2d 973 at 974.

SUMMARY OF THE ARGUMENT

This Court should refuse to reconsider a matter which has already been settled by this Court and followed by the federal appellate courts. In Jackson v. Virginia, this Court held that a state prisoner is entitled to habeas corpus relief if it is found that upon the evidence adduced at trial no rational trier of fact could have found proof of guilt beyond a reasonable doubt. The cases relied upon by Petitioner as authority for his request for a different standard of review do not support his position in the instant case. Additionally, the evidence adduced at trial court supports the jury's finding that Petitioner was competent to stand trial.

REASONS FOR DENYING THE WRIT

I.

THE QUESTION PRESENTED FOR REVIEW IS UNWORTHY OF THIS COURT'S ATTENTION

Rule 17 of the Rules of the Supreme Court provides that a review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. No such reason exists in this case.

II.

THE CIRCUIT COURTS OF APPEAL ARE NOT IN CONFLICT ON THE QUESTION PRESENTED

Petitioner is unable to show that a conflict exists among the Courts of Appeal as to the issue presented in this case. Accordingly, review by this Court will not resolve any differences among the federal Courts of Appeal.

III.

THIS COURT SHOULD REFUSE TO RECONSIDER THE WELL SETTLED STANDARD OF REVIEW ENUNCIATED IN JACKSON V. VIRGINIA

In Jackson v. Virginia, this Court held that a state prisoner was entitled to habeas corpus relief if it is found that upon the evidence adduced at trial no rational trier of fact could have found proof of guilt beyond a reasonable doubt. The Fifth Circuit, in affirming the denial of federal habeas relief held that this standard was applicable to federal habeas review of a jury's determination that a criminal defendant is competent to stand trial. Petitioner, however, seeks to have the federal habeas courts engage in a de novo review of the evidence admitted at his competency hearing. He contends that the verdict of the jury should be set aside as being contrary to the great weight and preponderance of the evidence. Petitioner further asserts that Jackson v. Virginia, supra, is inapplicable to the instant case because the Texas competency statute places on the defendant the burden of proving incompetency to stand trial by a preponderance of the evidence. Art. 46.02, Texas Code of Criminal

Procedure. This Court has not restricted the application of Jackson to those cases where the burden of proof beyond a reasonable doubt is on the State.

Petitioner relies primarily on Bruce v. Estelle, 483 F.2d 1031 (5th Cir. 1973), appeal after remand, 536 F.2d 1051 (5th Cir.), cert. denied, 429 U.S. 1053 (1976), and United States v. Makris, 435 F.2d 899 (5th Cir.), cert. denied, 430 U.S. 954 (1976), for his contention that the federal courts should undertake a de novo review of a state competency determination. Both of these cases, however, involved appellate review of the federal district court's retroactive competency hearing held after the appellate court's remand for that purpose. When Petitioner presented this contention to the court below, the court found that its prior holdings in these cases had little application to review of a state court's pre-trial competency hearing before a jury. 669 F.2d at 976.

Additionally, the factual findings of the jury are entitled to a presumption of correctness. 28 U.S.C. §2254(d). Petitioner has not contended that the Texas competency statute is unconstitutional; rather, he simply alleges that he disagrees with the jury's decision. Further, the issue of competency to stand trial is a question of fact and the jury is the sole judge of the credibility of the witnesses. United States v. Martinez, 588 F.2d 495 (5th Cir. 1979). The jury's determination of Petitioner's competency is supported by the evidence and, thus, is entitled to a presumption of correctness. Sumner v. Mata, 449 U.S. 539 (1981). Upon federal habeas review, the proper question for an appellate court is whether, after review of the evidence in the light most favorable to the prosecution, a rational trier of fact could have found Petitioner competent to stand trial by a preponderance of the evidence. See, Jackson v. Virginia, 443 U.S. at 319 This standard of review was deemed appropriate by this Court because it "impinges upon the jury discretion only to

the extent necessary to guarantee the fundamental protection of due process of law." Ibid.

Finally, Petitioner claims that the court below did not apply the standard of Jackson v. Virginia, but instead fashioned its own standard of review. This simply is incorrect. The court below held:

> In this case, we have a constitutionally grounded state burden of proof declaring that an accused is not to be subjected to a criminal trial if there is a demonstration of incompetence by preponderance of the evidence before trial. We also have a jury verdict of competence entitled to a presumption of correctness. By contrast to Bruce and Makris, our Court now sits in review of a state jury verdict that has already been examined by a district court on the basis of "all the evidence". Ours is second-tier review, as in Jackson v. Virginia. Our standard, therefore, must be that appropriate to a Jackson-type safety net, a final bulwark against convictions unsoundly based in evidence.

669 F.2d at 976-977.

The court, then, after review of all the evidence, concluded:

> Viewing the evidence in the light most favorable to the jury verdict, we find that reasonable juror could have decided that White failed to show his incompetence by a preponderance of the evidence.

669 F.2d at 978.

IV.

THE EVIDENCE IN THIS CASE SUPPORTS THE JURY'S VERDICT

In the case at bar, Petitioner was afforded a separate jury trial on the issue of his competency to stand trial, in accordance with Article 46.02, supra. He presented the testimony of a psychiatrist, two clinical psychologists, as well as the lay testimony of a jail visitor and defense counsel. The State responded with testimony from two medical doctors, a neurologist and a radiologist, as well as lay testimony from a jailer and a deputy sheriff. After hearing all the evidence, the jury concluded that Petitioner was competent to stand trial.

Petitioner essentially complains that the verdict of the jury was inconsistent with the great weight and preponderance of the evidence and requests this Court to substitute its own findings of fact for those of the jury which heard the evidence. He also claims that his expert witnesses were better qualified than those presented by the State. These claims fail to take into account the fact that Petitioner's experts were impeached by cross-examination, or that there was sufficient evidence from which the jury could reject Petitioner's claim that he was incompetent to stand trial. Petitioner essentially fails to take into account the fact that expert testimony is not binding on the jury, the sole judge of the credibility of witnesses. Reese v. Wainwright, 600 F.2d 1085, 1090 (5th Cir. 1979).

CONCLUSION

For the reasons discussed above, Respondent respectfully requests that the petition for certiorari be denied.

Respectfully submitted,

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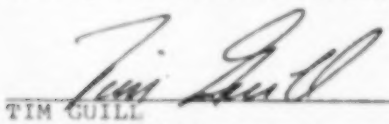

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PROOF OF SERVICE

I hereby certify that on the 8th day of October, 1982, one copy of the Respondent's Brief in Opposition was mailed, postage prepaid, to Mr. Mike Brown, BROWN, HARDING, FARGASON & BROWN, 1601 Broadway, Lubbock, Texas 79401. All parties required to be served have been served. I am a member of the Bar of this Court.

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ATTORNEY FOR RESPONDENT

SUBSCRIBED AND SWORN TO BEFORE ME this 8th day of October, 1982.

Mary Jane Lisle Kellogg

NOTARY PUBLIC in and for
Travis County, T E X A S

MARY JANE LISLE KELLOGG
NOTARY PUBLIC IN AND FOR
TRAVIS COUNTY, TEXAS
MY COMMISSION EXPIRES 10/2/85

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APPEARANCE OF COUNSEL

The Clerk will enter my appearance as counsel for the State of Texas who in this Court is Respondent. I certify that I am a member of the bar of the Supreme Court of the United States.

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